

## **Marquis Aurbach Coffing**

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Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

STEVENSON FISHER, individually and on behalf of all persons similarly situated,

Case No.: 2:15-cv-00358-RFB-NJK

**Plaintiff,**

vs.

MJ CHRISTENSEN JEWELERS, LLC, a Nevada limited liability company; LE VIAN CORP., a New York business corporation; RSVP DEVELOPMENT CORP., a Florida profit corporation dba RSVP PUBLICATIONS and RSVP PUBLICATIONS, INC.; LX PUBLICATIONS, LLC, an Illinois limited liability company dba LX MAGAZINES; DOES I through X, inclusive; and ROE CORPORATIONS I through X, inclusive,

## Defendants.

FILE

**STIPULATION AND ORDER TO ~~FIND~~ SECOND AMENDED COMPLAINT**

The Parties to the above-entitled action, by and through their respective counsel of record herein, hereby stipulate and agree as follows:

1. Plaintiff filed an Amended Complaint on March 30, 2015.
2. The Amended Complaint named LX PUBLICATIONS, LLC, an Illinois limited  
company dba LX MAGAZINES as a Defendant (“LX IL”).
3. LX IL failed to respond to the Complaint, and Default was entered against LX IL  
on July 2, 2015 (#35). Notice of Entry of Default was filed on July 16, 2015 (#36). The Notice

1 of entry of Default was served via regular mail to the same address where LX IL was served with  
 2 the Summons and Complaint.

3       4. Plaintiff recently learned that LX IL was involuntarily dissolved and that LX  
 4 Publications, LLC is now a registered Nevada limited liability company ("LX NV") (LX IL and  
 5 LX NV are collectively referred to as "LX"). Accordingly, Plaintiff wishes to file a Second  
 6 Amended Complaint to name LX NV as a Defendant.

7       5. Plaintiff filed a Notice of Voluntary Dismissal of RSVP Development Corp.  
 8 ("RSVP") Without Prejudice on April 21, 2015. Accordingly, Plaintiff wishes to file a Second  
 9 Amended Complaint to remove RSVP from the caption.

10      6. After conducting some written discovery, Plaintiff has confirmed that this case  
 11 involves a prerecorded voice message made by Defendant MJ Christensen Jewelers and provided  
 12 to LX. Therefore, Plaintiff wishes to clarify the use of a prerecorded message throughout the  
 13 Second Amended Complaint.

14      7. For these reasons, the Parties stipulate to the filing of the Second Amended  
 15 Complaint, a proposed copy of which is attached hereto as **EXHIBIT A**.

16           IT IS SO STIPULATED.

17           Dated this day of November, 2015

18           **MARQUIS AURBACH COFFING**

19          By: /s/ Candice E. Renka  
 20           SCOTT A. MARQUIS, ESQ.  
          Nevada Bar No. 6407  
 21           CANDICE E. RENKA, ESQ.  
          Nevada Bar No. 11447  
 22           10001 Park Run Drive  
          Las Vegas, NV 89145  
 23           *Attorneys for Plaintiff Stevenson Fisher*

17           Dated this day of November, 2015

18           **FABIAN & CLENDENIN, P.C.**

19          By: /s/ Ashton J. Hyde  
 20           ASHTON J. HYDE, ESQ.  
          Nevada Bar No. 12407  
 21           601 South 10<sup>th</sup> Street, Suite 204  
          Las Vegas, Nevada 89101  
 22           *Attorney for Defendant MJ Christensen  
          Jewelers, LLC*

1 Dated this day of November, 2015  
2

3 **SNELL & WILMER, LLP**

4 By: /s/ Kelly H. Dove  
5 KELLY H. DOVE, ESQ.  
Nevada Bar No. 10569  
3883 Howard Hughes Parkway  
Suite 1100  
Las Vegas, NV 89169-5958  
7 Attorneys for Defendant Le Vian Corp.

8 **ORDER**

9 Consistent with the above Stipulation, it is hereby ORDERED that Plaintiff may file the  
10 Second Amended Complaint, consistent with the copy attached to the above Stipulation as

11 **EXHIBIT A.**

12 IT IS SO ORDERED.



13 **UNITED STATES MAGISTRATE JUDGE**

14 DATED: November 17, 2015

15 Submitted by:

16 MARQUIS AURBACH COFFING

17 By /s/ Candice E. Renka  
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22 Attorneys for Plaintiff Stevenson Fisher

# Exhibit A

## **Marquis Aurbach Coffing**

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**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

STEVENSON FISHER, individually and on  
behalf of all persons similarly situated,

Case No.: 2:15-cv-00358-RFB-NJK

**Plaintiff,**

vs.

MJ CHRISTENSEN JEWELERS, LLC, a Nevada limited liability company; LE VIAN CORP., a New York business corporation; LX PUBLICATIONS, LLC, an Illinois limited liability company dba LX MAGAZINES; LX PUBLICATIONS, LLC, a Nevada limited liability company dba LX Magazines; DOES I through X, inclusive; and ROE CORPORATIONS I through X, inclusive.

**[PROPOSED] SECOND AMENDED  
COMPLAINT**

#### Defendants.

Plaintiff STEVENSON FISHER (hereinafter "Plaintiff"), individually and on behalf of all persons similarly situated, by and through his attorneys of record, the law firm of Marquis Aurbach Coffing, alleges and complains as follows:

## PARTIES

1. Stevenson Fisher (“Plaintiff”) is and was at all times relevant herein, an individual and a citizen residing in Clark County, Nevada.

2. MJ Christensen Jewelers, LLC is and was at all times relevant herein, a Nevada limited liability company (“MJC”).

3. Le Vian Corp., is and was at all times relevant herein a New York business corporation doing business in Nevada ("Le Vian").

4. LX Publications, LLC, an Illinois limited liability company, was formed on or about July 28, 2010 and involuntarily dissolved on or about January 11, 2013 ("LX IL").

5. LX IL is and was at all times relevant herein an Illinois limited liability company doing business as LX Magazines and doing business in Nevada ("LX").

6. LX IL and LX NV are collectively referred to as "LX."

7. LX Publications, LLC, a Nevada limited liability company, was formed on or about March 10, 2014 and is an active LLC according to the Nevada Secretary of State (“LX NV”).

8. LX NV is and was at all times relevant herein an Illinois limited liability company doing business as LX Magazines and doing business in Nevada.

9. The names and capacities, whether individuals, corporate, associate or otherwise of Defendants named herein as DOE and ROE CORPORATION are unknown or not yet confirmed. Upon information and belief, said DOE and ROE CORPORATION Defendants are responsible for damages suffered by Plaintiff and, therefore, Plaintiff sues said Defendants by such fictitious names. Plaintiff will ask leave to amend this Complaint to show the true names and capacities of each DOE and ROE CORPORATION Defendant at such time as the same has been ascertained.

## **JURISDICTION AND VENUE**

10. The Court has subject matter jurisdiction under 28 U.S.C. § 1331 under the federal question doctrine.

11. This Court has personal jurisdiction over the Defendants because the prerecorded marketing calls to Plaintiff's wireless phone were received in Nevada.

12. Venue properly lies in this court under 28 U.S.C. § 1391(b)(2) because a substantial portion of the events that gave rise to Plaintiff's claims transpired in Nevada.

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#### **NATURE OF THE ACTION**

13. This is a proposed class action brought on behalf of consumers that received telemarketing calls to their cell phones made using a prerecorded voice or automated telephone dialing system (“ATDS”) by or on behalf of Defendants, for which calls the Defendants never obtained express, written consent from the consumers.

14. Plaintiff alleges that Defendants' use of a prerecorded voice or ATDS to make telemarketing phone calls to consumers' cell phones without prior express, written consent violates the Telephone Consumer Protection Act of 1991 ("TCPA"), 47 U.S.C. § 227, and the Nevada Deceptive Trade Practices Act, ("NVDTPA"), NRS Chapter 598. Moreover, a violation of the TCPA is a *per se* violation of the NVDTPA. NRS 598.023(3).

15. The TCPA, as interpreted by Federal Communications Commission (“FCC”) prohibits the use of an ATDS to make telemarketing calls to consumers’ cell phones unless the consumer has provided express, written consent.

16. Plaintiff brings this action in his individual capacity and on behalf of the classes of persons similarly situated, as defined below.

## **THE RELATIONSHIP AMONGST THE DEFENDANTS**

17. MJC is a retailer that sells jewelry manufactured and provided by other companies, such as Le Vian.

18. Le Vian is a company that designs and sells jewelry and watches internationally.

19. Le Vian has several brands of jewelry.

20. Le Vian sells its product through retailers, including MJC.

21. Le Vian has input and control over certain aspects of how MJC markets Le Vian products.

22. Le Vian sometimes sends representatives to MJC to instruct MJC how to display, advertise, and market its jewelry.

23. Le Vian instructs MJC use its displays and advertisements, and requires that MJC market its materials with Le Vian's third-party marketing company, LX.

24. At Le Vian's instruction, MJC provided LX a recorded voice message advertising MJC and a list of telephone numbers.

25. The list of telephone numbers included over 10,000 telephone numbers.

26. LX then utilized the prerecorded voice message and, upon information and belief, an ATDS, to make the calls to the consumers, such as the Plaintiff in this case.

## **GENERAL ALLEGATIONS**

27. On or about December 3, 2014 at 12:30 p.m., Plaintiff received a prerecorded telephone call from MJC regarding a sale that MJC was having.

28. Plaintiff has never done business with MJC.

29. Plaintiff received the call on his personal cell phone while in Las Vegas, Clark County, Nevada.

30. Upon information and belief, the call was made using an ATDS.

31. The call was a telemarketing call.

32. Plaintiff has never provided Defendants express, written consent to receive telemarketing calls made using a prerecorded voice or ATDS to Plaintiff's cell phone.

33. Defendants knew or should have known that they did not have the prior express, written consent of Plaintiff or any other members of the classes to use a prerecorded voice or ATDS to make telemarketing calls to their cell phones.

34. As a result of Defendants' conduct, class members have suffered damages in that they have been charged by their cell phone carrier for minutes, time, or usage for the calls made by Defendants.

35. As a result of Defendants' conduct, class members have suffered a violation of their right to privacy.

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1 that their identities can be ascertained from Defendants' books and records. Attempting to join  
2 and name each Class member as a Co-Plaintiff would be unreasonable and impracticable.

3       **42. COMMONALITY:** There is a well-defined commonality of interest in the  
4 questions of law and fact involving Class Members in that all Class Members received  
5 telemarketing calls, made using a prerecorded voice or ATDS, to their cell phones, from  
6 Defendants in violation of the TCPA and NVDTPA.

7       **43. PREDOMINANCE:** There are questions of law and fact common to the Class  
8 Members, which are identical for each Class Member and which predominate over the questions  
9 affecting the individual Class Members, if any, which include:

10           a. Whether Defendants violated the TCPA and the NVDTPA when using a  
11 prerecorded voice or ATDS to make telemarketing calls to Class Members' cell phones without  
12 express, written consent;

13           b. Whether Defendants used a prerecorded voice to make the calls;

14           c. Whether Defendants used an ATDS to make the calls;

15           d. Whether the calls were telemarketing calls;

16           e. Whether the calls were made to Class Members' cell phones;

17           f. Whether the Class Members provided express, written consent to receive  
18 the calls;

19           g. Whether Plaintiff and Class Members are entitled to damages under the  
20 TCPA;

21           h. Whether Plaintiff and Class Members are entitled to damages under the  
22 NVDTPA;

23           i. Whether Plaintiff and Class Members are entitled to treble damages under  
24 the TCPA; and

25           j. Whether Plaintiff and Class Members are entitled to injunctive relief under  
26 the TCPA;

27       **44. TYPICALITY:** The claims of the Plaintiff are typical of the Class Members in  
28 that Plaintiff is informed and believes that each Class Member received a telemarketing call from

1 Defendants, made using a prerecorded voice or ATDS to their cell phone without having  
2 provided express, written consent to Defendants. Also, there is uniformity in the federal and  
3 state legislation prohibiting the practice complained of and providing statutory damages that may  
4 be pursued in state court. In this action, Plaintiff and the Class Members seek an injunction  
5 prohibiting Defendants' using a prerecorded voice or ATDS to make telemarketing calls to  
6 consumers' cell phones without express, written consent; damages; attorney fees; and costs  
7 incurred in the prosecution of this action.

8       45.     **ADEQUACY:** Plaintiff is willing to devote the time necessary to serve as  
9 representative of the National Class and the Nevada Class and work with class counsel.  
10 Plaintiff's attorneys are experienced and knowledgeable in class action litigation in Nevada, and  
11 they will fairly and adequately represent the interests of the National Class and the Nevada Class  
12 and have no interests antagonistic to the class.

13       46.     **SUPERIORITY:** There is no plain, speedy or adequate remedy other than  
14 maintenance of this class action since Plaintiff is informed and believes that a class action is  
15 superior to any other available means for the adjudication of this controversy.

16       47.     This action will cause an orderly and expeditious administration of the Class  
17 Members' claims. A class action will save time, effort and expense, and will ensure uniformity  
18 of decisions at the lowest cost and with the least toll on judicial resources.

19       48.     Because the loss suffered by individual Class Members may be relatively small,  
20 the expense and burden of individual litigation makes it impracticable for the Class Members to  
21 individually seek redress. Plaintiff believes that Class Members, to the extent they are aware of  
22 their rights against Defendants, would be unable to secure counsel to litigate their claims on an  
23 individual basis because of the relatively small nature of the individual damages warranted  
24 and/or the value of individual injunctive relief.

25       49.     Hence, a class action is the only feasible means of recovery for the Class  
26 Members. Furthermore, without a class action, Class Members will continue to suffer damages  
27 and Defendants will continue to violate federal and state law, retaining and reaping the proceeds  
28 of their wrongful marketing practices.

50. **MANAGEABILITY:** There are no manageability problems due to variations in state laws or choice of law provisions, because the TCPA applies to the claims of all the Class Members asserted herein, and Nevada law applies to the Nevada Class. Further, the evidence proving Defendants' violation of the statutes is ascertainable through discovery. The identities of the Class Members are known by Defendants, and damages can be calculated from Defendants' records. Thus, this action poses no unusual difficulties that would impede its management by the Court as a class action.

## **FIRST CLAIM FOR RELIEF**

(Violation of the Telephone Consumer Protection Act 47 USC § 227 et seq.)

51. Plaintiff repeats and realleges the paragraphs above as though fully stated herein.

52. Defendants used a prerecorded voice or ATDS to make telemarketing calls to the Class Members' cell phones without express, written consent from the Class Members.

53. By using an ATDS, Defendants were able to effectively send thousands of telemarketing calls to thousands of consumers' cell phone numbers.

54. Defendants' calls were made using an artificial prerecorded voice. By using an ATDS and a prerecorded message, Defendants are able to simultaneously call thousands of wireless customers without any human intervention and at very little cost to Defendants.

55. Upon information and belief, Defendants used a prerecorded voice or ATDS to make the calls or had a high degree of involvement in the making of the calls. For example, Defendants:

- a. Knew that the calls were being made with a prerecorded voice;
- b. Knew that the calls were being made with an ATDS;
- c. Knew that the calls were telemarketing calls;
- d. Knew that the calls were being made to Class Members' cell phones;
- e. Knew that the Class Members had not provided express, written consent to receive such calls;
- f. Participated in preparing the content of the calls or messages;
- g. Provided or obtained the cell numbers of the Class Members; and

1 h. Received compensation for or a benefit from making such calls.

2 56. As a result of Defendants' conduct, Plaintiff and the Class Members have suffered  
3 damages by being charged by their cell phone carriers for the minutes, time, or usage for the  
4 calls made by Defendants.

5 57. As a result of Defendants' conduct, Class Members have suffered a violation of  
6 their right to privacy.

7 **SECOND CLAIM FOR RELIEF**

8 **(Violation of the Nevada Deceptive Trade Practices Act NRS Chapter 598)**

9 58. Plaintiff repeats and realleges the paragraphs above as though fully stated herein.

10 59. Defendants willfully and knowingly violated the TCPA, which is a statute relating  
11 to the sale or lease of goods or services. NRS 41.600; NRS 598.0923(3).

12 60. Defendants engaged in a deceptive trade practice.

13 61. As a direct and proximate result of Defendants' deceptive trade practice, Plaintiff  
14 and Nevada Class Members have suffered damages in an amount to be proven at trial.

15 62. Plaintiff and Nevada Class Members are victims of consumer fraud and are  
16 therefore entitled to damages as well as attorney fees and costs. NRS 41.600.

17 **THIRD CLAIM FOR RELIEF**

18 **(Declaratory Relief)**

19 63. Plaintiff repeats and realleges the paragraphs above as though fully stated herein.

20 64. A genuine dispute exists between the parties regarding the Defendants' illegal  
21 calls to Plaintiff and Class Members.

22 65. The interests of the parties are adverse.

23 66. This Court should declare that based upon the Defendants' violation of federal  
24 and Nevada law, that Plaintiff and Class Members are entitled to \$500 damages per call, treble  
25 damages for each call, injunctive relief, attorney fees, and costs.

26 67. It has become necessary for Plaintiff and Class Members to engage the services of  
27 an attorney to prosecute this action; therefore, Plaintiff and Class Members are entitled to costs  
28 and attorney fees as special damages.

## **FOURTH CLAIM FOR RELIEF**

#### **(Attorney Fees as Special Damages)**

68. Plaintiff repeats and realleges the paragraphs above as though fully stated herein.

69. As a direct and proximate result of Defendant's conduct, it has been necessary for Plaintiff and Class Members to retain the services of an attorney in order to prosecute this action and, therefore, Plaintiff and Class Members are entitled to an award of reasonable attorney fees and costs incurred herein as special damages.

## **PRAAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for the following relief against Defendants:

1. Certification of the National Class and Nevada Class;
2. A Declaration that Defendants have violated the TCPA because it failed to obtain express, written consent to make the calls to Plaintiff or the Class Members;
3. Judgment in the amount of \$500 for Plaintiff and each member of the National Class and the Nevada Class for statutory damages for each call received by them from Defendants;
4. Judgment in the amount equal to three times the damages to Plaintiff and the Class Members under the TCPA;
5. Extraordinary, equitable, and/or injunctive relief as permitted by law to ensure that Defendants will stop making the illegal calls;
6. For an award of reasonable attorney fees and costs of suit; and
7. For any further relief as the Court deems to be just and proper.

Dated this \_\_\_\_ day of November, 2015.

## MARQUIS AURBACH COFFING

By

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